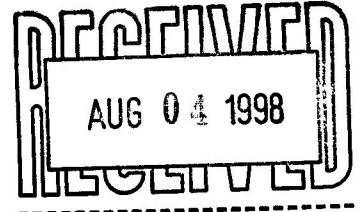


Judicial Ethics Committee
Advisory Opinion No. 98-5
Issued: August 3, 1998



The Judicial Ethics Committee has been requested to consider several questions concerning the application of the Maine Code of Judicial Conduct to the political activities of probate judges and candidates for judge of probate.

1. May a candidate for judge of probate attend a supper sponsored by a political party, where an admission fee covers the costs of the candidate's meal and includes an additional sum used to pay for a speaker and as a contribution to the political party itself?

Discussion: In the Maine Code of Judicial Conduct, Part IIB(1)(b) exempts judges of probate from the political activity restrictions found in Canon 5A(1)(a) - (d). Thus, a probate judge is permitted to attend a political gathering. Further, pursuant to Canon 5C(1), a candidate for election or reelection as judge of probate is subject to the "applicable" provisions that control the conduct of sitting probate judges. The Committee construes this parameter to mean that the provisions of Canon 5A(1) that are inapplicable to sitting probate judges are also inapplicable to candidates for that position. Thus, because sitting probate judges are permitted to attend a political gathering in the form of a supper, candidates for that office are also permitted to do so.

However, both sitting probate judges and candidates for that position are precluded from paying anything more than the cost of the supper. Neither a probate judge nor a candidate for judge of probate is relieved of the general prohibition against "contribut[ing] to a political organization or candidate, or [against] purchas[ing] tickets for political party dinners or other functions. . . ." Canon 5A(1)(e). The assessment exceeding the cost of the supper amounts to such a contribution and is thus prohibited under the Code.

2. A local political organization organizes a potluck dinner, where attendees are urged (but not required) to make financial contributions for

the benefit of the party. May a judge of probate or candidate for judge of probate make such a contribution?

Discussion: No. Canon 5A(1)(e) prohibits the judge or candidate from making a contribution (even a nominal one) to a political organization. However, as is discussed in connection with question 1, a probate judge or candidate may attend the political gathering. This is the case even though fundraising efforts are part of the gathering, as long as the judge or candidate for judge of probate does not solicit funds.

3. Delegates attending a state political convention are charged \$20 by the state political committee, and alternate delegates are charged \$15. Is payment of this fee by a probate judge (or a candidate for the office) proscribed by Canon 5A(1)(e)?

Discussion: Yes. The fee for delegates and alternates appears to be an "assessment," and judges of probate and candidates for that position may not pay such an assessment pursuant to Canon 5A(1)(e).

4. A person (other than a delegate) seeking admission to a state political convention must pay a small fee to gain entrance. May a probate judge, or candidate for that position, pay the admission fee even if that person is not a delegate?

Discussion: As is discussed in connection with question 1, a probate judge or candidate may attend the political gathering. However, Canon 5A(1)(e) prohibits the judge or candidate from purchasing tickets for political functions. Thus, the judge or candidate cannot pay a fee to gain admission to the convention.

The Committee recognizes the potential incongruity between several relevant canons here. Under the terms of Canon 5C(1), the general prohibition against attendance by judges at political gatherings does not apply to probate judges and candidates for that office. Additionally, Canons 5C(2)(a) and (c) expressly permit candidates for election or reelection as judge of probate to speak to such gatherings and distribute

promotional campaign literature. Both of these activities are commonly associated with political conventions. Nonetheless, Canon 5A(1)(e) prohibits probate judges and candidates from purchasing tickets (i.e., paying admission) to attend political gatherings. The political organization might attempt to address this dilemma by waiving the admission fee for probate judges and candidates for that position. However, that approach might create its own problem because it would amount to special treatment provided to judges and judicial candidates. These problems are representative of several instances where, in the context of political activities, the requirements of the Code of Judicial Conduct requires careful consideration of its terms. Those subject to these provisions of the Code are thus well advised to maintain a high level of sensitivity to the sometimes difficult task of delineating permitted and proscribed conduct.

5. May a candidate for judge of probate solicit statements of support intended for public dissemination? Under Canon 5C, may the candidate for judge of probate request that a third party place a campaign sign on a lawn or a bumper sticker on a vehicle?

Discussion: Canon 5C(3) specifically prohibits candidates for election or reelection as judge of probate from soliciting publicly stated support. This is a broad concept which encompasses display of campaign signs and bumper stickers. This canon, however, specifically permits that candidate's election *committee* to secure public statements of support for the candidate. Thus, if the election committee engages in this conduct, thereby insulating the third party from direct solicitation by the candidate, then the candidate is not in violation of the Canon.¹

6. May the candidate for judge of probate attend a fundraiser designed to promote that person's candidacy?

Discussion: As a general matter, Canon 5A(1)(d) forbids a judge

¹A discussion of these types of political activities pertinent to non-probate judges is found in Opinion 94-3.

from attending political gatherings. This prohibition, however, is inapplicable to judges of probate. See Part II(1)(B)(1)(b). Further, Canon 5C(1) requires candidates for election or reelection as judge of probate to “comply with the applicable provisions of” Canon 5A. As is noted above, the Committee construes this restriction to signify that candidates for election or reelection as probate judge are both permitted to attend political gatherings. The provisions of Canon 5C(2) reinforce this conclusion. Canon 5C(2)(a) permits a candidate for judge of probate to “speak to gatherings on his or her own behalf.” Canon 5C(2)(c) permits that candidate to distribute pamphlets and other campaign literature. Both of these provisions clearly contemplate presence at a political event which promotes the person’s candidacy.

However, the candidate “shall not personally solicit or accept campaign contributions. . . .” Canon 5C(3). Thus, while the candidate is permitted to appear at the function and promote his or her candidacy, the candidate’s efforts must fall short of solicitations for contributions.

The demarcation between solicitation for non-financial support and financial support may not always be clear. The restrictions found in Canon 5C(3) (“. . . shall not personally solicit or accept campaign contributions”) is a narrow one and appears to prohibit only direct and personal efforts by the candidate to raise money. However, there are subtle ways in which a candidate might be seen as soliciting funds even without using words or engaging in conduct that is explicitly intended to raise money. Thus, candidates for the office must remain sensitive to the impact of their entreaties during a campaign, to ensure compliance with this limited restriction.

7. May a probate judge serve as an officer of a political party or in a leadership position in a political party?

Discussion: Probate judges and candidates for that office are exempt from Canon 5A(1)(a), which precludes judges from “act[ing] as a leader or hold[ing] an office in a political organization.” See Canon 5C(1); Part II(1)(B)(1)(b). Thus, a probate judge or a candidate for that office may hold a position as an officer or in some other leadership role with a

political party. This, however, is subject to the limitations found elsewhere in Canon 5, such as the prohibition against fundraising (Canon 5(A)(1)(e)) and the restrictions applicable to the probate judge's own campaign (Canon 5C(3)).

8. For purposes of Canon 5C, when does a person become a candidate for election or reelection to the office of judge of probate? Does a person become a candidate for election to a judge of probate when the person makes a formal announcement of an intention to run for election or submission of any formal documents expressing that intention, regardless of how far in advance of the election that event occurs?

Discussion: Part II(3)(B) of the Code of Judicial Conduct defines a "candidate" for judicial office as a person who "makes a public announcement of candidacy, files nomination papers, or authorizes solicitation or acceptance of contributions or support." Regardless of when such an event occurs, a public announcement of an intention to seek election for judicial office or submission of any nominating papers subjects that person to the provisions of Canon 5C.

9. May a judge of probate, or a candidate therefor, make a public statement of support for other candidates seeking public office?

Discussion: Yes. Canon 5A(1)(b) prohibits judges from publicly endorsing or opposing a candidate for public office. However, this restriction does not apply to sitting judges of probate. See Part II(1)(B)(1)(b). It also does not apply to candidates for election or reelection as judge of probate, pursuant to Canon 5C(1). See also Canon 5C(2)(d).

Note: The participation of Probate Judge Allan Woodcock in the Committee discussion of these probate matters was limited, and Judge Woodcock recused himself from participation in the drafting of this opinion.